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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 AMERICAN IMMIGRATION COUNCIL,
15 AMERICAN IMMIGRATION LAWYERS
ASSOCIATION, and HUMAN RIGHTS
WATCH,

16 Plaintiffs,

17 v.

18 UNITED STATES CITIZENSHIP AND
19 IMMIGRATION SERVICES, UNITED
STATES CUSTOMS AND BORDER
20 PROTECTION, and UNITED STATES
IMMIGRATION AND CUSTOMS
21 ENFORCEMENT,

22 Defendants.

) CASE NO. C-20-cv-03266-DMR

) **AMENDED JOINT CASE MANAGEMENT**
) **STATEMENT¹**

) **Date: September 2, 2020**

) **Judge: Hon. Donna M. Ryu**

) **Time: 1:30 pm**

) **Location: Remote**

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28 ¹ The JCMS has been amended to remove references to a previously-anticipated furlough of employees at USCIS. The furlough has since been averted.

1 The parties to the above-entitled action submit this JOINT CASE MANAGEMENT
2 STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California,
3 Judge Ryu's Standing Orders, and Civil Local Rule 16-9.

4
5 **1. JURISDICTION & SERVICE**

6 Plaintiffs American Immigration Council, American Immigration Lawyers Association, and
7 Human Rights Watch ("Plaintiffs") filed this action on May 13, 2020. Dkt. No. 1. Defendants United
8 States Citizenship and Immigration Services ("USCIS"), United States Customs and Border Protection
9 ("CBP"), and United States Immigration and Customs Enforcement ("ICE") (collectively "Defendants")
10 have been served.

11 This Court has subject matter jurisdiction of this action and personal jurisdiction over the parties
12 pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action
13 pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

14 Defendant notes that "[a]bsent a waiver, sovereign immunity shields the Federal Government
15 and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 461, 475 (1994). The waiver in this case has only
16 been asserted under FOIA, and no other provisions.

17 **2. FACTS**

18 **Plaintiffs' Statement of Facts**

19 Plaintiffs submitted four FOIA Requests to the Senior Director of FOIA Operations at the
20 Department of Homeland Security ("DHS") on December 21, 2019. One request was directed to DHS;
21 one to USCIS, one to CBP, and one to ICE. Plaintiffs sought records and data that reflect DHS's current
22 policies and practices regarding the MPP Plaintiffs sought expedited processing of their Requests under
23 28 C.F.R. § 16.5(e) and 6 C.F.R. § 5.5(e). DHS received these Requests on January 24, 2020. On
24 February 3 and 4, 2020, DHS transferred three of the Requests to FOIA Officers at USCIS, CBP, and
25 ICE. Then, on February 5, 2020, DHS transferred 6 out of 7 topics from another request to USCIS and
26 CBP.

27 Plaintiffs have received from USCIS an acknowledgment of receipt of Plaintiffs' FOIA requests
28 and denial of Plaintiffs' expedited processing requests for both. Plaintiffs have received from CBP a

1 notice of a tracking number change, a denial of Plaintiffs' expedited processing request for the 6
2 separately transferred requests, and a fee waiver disposition. Plaintiffs have not received any
3 correspondence or response from ICE.

4 **Defendants' Statement of Facts**

5 In response to Plaintiffs' FOIA requests. Defendants have commenced searches reasonably
6 calculated to lead to all responsive documents. Defendants also refer the Court to Defendant's Answer
7 and Affirmative Defenses filed on June 30, 2020. Dkt. No. 20.

9 **3. LEGAL ISSUES**

10 **Plaintiffs' Statement**

11 The issues in this litigation are:

- 12 1) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by
13 failing to properly respond within time required;
- 14 2) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by
15 failing to conduct an adequate search for responsive documents; and
- 16 3) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by
17 improperly withholding responsive records.

18 **Defendants' Statement**

19 In response to Plaintiffs' FOIA requests, Defendants have commenced searches reasonably
20 calculated to lead to all responsive documents.

22 **4. MOTIONS**

23 The parties are meeting and conferring about a potential production schedule, and do not believe
24 motions need to be scheduled at this juncture. The parties reserve the right to file motions.

26 **5. AMENDMENT OF PLEADINGS**

1 Plaintiff filed a First Amended Complaint on June 16, 2020 (Dkt. No. 18) and Defendants filed
2 an Answer on June 30, 2020 (Dkt. No. 20). The parties do not anticipate any further amendment to the
3 pleadings.

4
5 **6. EVIDENCE PRESERVATION**

6 Defendants agree to preserve evidence relevant to the issues reasonably evident in this action,
7 and the parties do not anticipate any issues related to evidence preservation.

8
9 **7. DISCLOSURES**

10 Both parties maintain that this case is likely to be decided on the administrative records, and as
11 such is exempt from initial disclosures. Fed. R. Civ. P. 26(a)(1)(B)(i).

12
13 **8. DISCOVERY**

14 Defendants maintain that discovery is typically inappropriate in FOIA cases, and will object to
15 any discovery requests. *See Lane v. Dept. of Interior*, 523 F.3d 1228, 1134 (9th Cir. 2008) (discovery is
16 limited in FOIA cases “because the underlying case resolved around the propriety of revealing certain
17 documents”); *Wheeler v. CIA*, 271 F. Supp. 2d 132, 139 (D.D.C. 2003) (citing *Judicial Watch, Inc. v.*
18 *Export-Import Bank*, 108 F. Supp. 2d 19, 25 (D.D.C. 2000)).

19 **9. CLASS ACTIONS**

20 N/A

21
22 **10. RELATED CASES**

23 There are no related cases or proceedings pending before another judge of this court or another
24 court or administrative body.

25
26 **11. RELIEF**

27 Plaintiffs seek declaratory and injunctive relief.

1 Defendants seek a dismissal of the action with prejudice, and such other relief as may be
2 appropriate.

3
4 **12. SETTLEMENT AND ADR**

5 The parties will work to resolve this matter expeditiously. If needed, the parties will request
6 referral to a Magistrate Judge for settlement.

7
8 **13. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES**

9 The parties have consented to a magistrate judge to conduct all further proceedings including
10 trial and entry of judgment.

11
12 **14. OTHER REFERENCES**

13 N/A

14
15 **15. NARROWING OF ISSUES**

16 The parties expect any issues to be narrowed via Defendants' subsequent searches and proposed
17 production schedule, and via motions if necessary.

18
19 **16. EXPEDITED TRIAL PROCEDURE**

20 The parties do not believe that this is the type of case that should be handled under the Expedited
21 Trial Procedure of General Order 64, Attachment A.

22
23 **17. SCHEDULING**

24 The parties are meeting and conferring about a potential production schedule and request deferral
25 of any scheduling of motions.

26
27 **18. TRIAL**

28 Trials are not typical in FOIA cases, and the parties do not believe a trial will be necessary in this
case.

1
2 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

3 Plaintiffs are not aware of any non-party interested entities or persons.

4 Defendants are exempt from this requirement as a federal government entity.

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6 **20. PROFESSIONAL CONDUCT**

7 Counsel for all parties have reviewed the Guidelines for Professional Conduct for the Northern
8 District of California.

9
10 **21. OTHER**

11 N/A.

12 Respectfully submitted,

13
14 Dated: August 26, 2020

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16 Respectfully submitted,

17 DAVID L. ANDERSON
18 UNITED STATES ATTORNEY

19 /s/ Julie Bibb Davis
20 Julie Bibb Davis
21 Assistant United States Attorney
22 Attorneys for Defendants

23 /s/ David P. Enzminger
24 David P. Enzminger
25 John E. Schreiber
26 Morgan Stewart
27 Dillon Kellerman
28 Leah Romm
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